

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 5TH DAY OF NOVEMBER, 2021

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA**

JUDGE

SUIT No.: CV/2413/2018

IN THE MATTER OF CHEKWUBE OSITA EBUBEALOR, ESQ – APPLICANT

AND

1. THE NIGERIAN ARMY
 2. THE NIGERIAN AIR FORCE
 3. THE NIGERIAN NAVY
 4. FEDERAL MINISTRY OF JUSTICE
 5. ATTORNEY GENERAL OF THE
FEDERATION AND MINISTER OF JUSTICE
 6. ERNEST .A EZEBILO, ESQ
 7. MAUREEN ONYEBUCHI MAHA
 8. DAVID WILLIAMS OKOLIE
 9. ABDALLAH GODFREY ASHANA
 10. SERGENT YUNUSA
 11. MRS. UZOAMAKA ONUKWULI
 12. MOHAMMED IBRAHIM
- } RESPONDENTS

JUDGMENT

This case which is predicated on fundamental Rights Enforcement Procedure was transferred from Justice V.V.Venda's Court to this Court on the 3/8/20.

Meanwhile it was filed on the 24/7/18. This Court heard it on the November 2020.

In it the Applicant claimed the following Reliefs:

1. **RELIEFS SOUGHT:**

- i. **A DECLARATION** that the use of a Machete by one Mohammed Ibrahim, the 12th Respondent herein, an illegal immigrant from the Republic of Niger, to fight the Applicant, on the express instructions of the 6th Respondent, sometime in June/July, 2016, within the premises of Plot 447 Omodeinde Road, Dutse-Alhaji New Extension, Zone 6, Dutse, Abuja, is a grave attempt to infringe the Applicant's fundamental right to his life, as preserved by **section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria, 2010**, and therefore, wrongful, unlawful, illegal and punishable by law.

- ii. **A DECLARATION** that the slaps, beatings and other forms of assault and battery unleashed on the Applicant, on 11/4/2016, at a location near the Barcelona Hotels, Wuse II, Abuja, by the 8th, 9th and 10th Respondents, jointly and severally, who are Employees of the 1st, 2nd and 3rd Respondents, respectively, acting in concert with the 7th Respondent, at the behest of the 6th Respondent, an Employee of the 4th Respondent and who is also the Agent of the 11th Respondent,

for no just cause, is a flagrant violation of the Applicant's fundamental right to dignity of human person, as enshrined under **section 34(1) (a) of the Constitution of the Federation Republic of Nigeria, 1999 (as amended), and Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria, 2010.**

- iii. **A DECLARATION** that the abduction of the Applicant by the 8th, 9th and 10th Respondents, who are Employees of the 1st, 2nd and 3rd Respondents, respectively, acting in concert with the 7th Respondent at the behest of the 6th Respondent, who is an Employee of the 4th Respondent, and who is also the Agent of the 11th Respondent, (which incident occurred on 11/4/2016) at a location near the Barcelona Hotels, Wuse II, Abuja, by the said Respondents forcefully pushing the Applicant into, and carrying him away in an ash Coloured Honda Accord (End of Discussion) car with Registration Number: **BWR 885 AL**, driven by the 9th Respondent, and closely followed behind by a Peugeot 405 car with Registration Number: **EPL 629 ABJ**, driven by the 10th Respondent to an undisclosed destination, which later turned out to be inside the premises of the 4th Respondent, and the 6th Respondent's office and his place of employment, without any lawful cause), is a gross infraction of the Applicant's fundamental right to his personal liberty, as provided by **section 35 of the Constitution of**

the Federal Republic of Nigeria 1999 (as amended) and Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria, 2010.

- iv. **A DECLARATION** that the forceful abduction of the Applicant by the 8th, 9th and 10th Respondents, who are the respective Employees of the 1st, 2nd and 3rd Respondents, acting in concert with the 6th Respondent on 11/4/2016, from a location near the Barcelona Hotels, Wuse II, Abuja, on the instructions of the 6th Respondent, an Employee of the 4th Respondent, in the course of his official duty with the said 4th Respondent and which 6th Respondent is also the Agent of the 11th Respondent, (when the said Respondents pushed the Applicant into, and whisked him away in an ash coloured Honda Accord (End of Discussion) car with Registration Number: **BWR 885 AL**, driven by the 9th Respondent, which was closely followed behind by a Peugeot 405 car with Registration Number: **EPL 629 ABJ**, driven by the 10th Respondent, to an undisclosed destination but which turned out to be inside the premises of the 4th Respondent and the 6th Respondent's office and his place of employment), without any legally justifiable reason, is a severe breach of the Applicant's fundamental right to his freedom of movement, as safeguarded by **section 41 of the Constitution of the Federal Republic of**

Nigeria, 1999 (as amended) and Article 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria, 2010.

- v. An unreserved letter of apology, written to the Applicant by the Respondents, especially the 6th to the 12th Respondents, and published in at least three (3) Newspapers with nationwide circulation.
- vi. Aggravated, exemplary, and punitive damages in the sum of **₦250, 000, 000:00 (Two Hundred and Fifty Million Naira) Only**, payable by the 6th and 12th Respondents, for the physical, mental, emotional and psychological trauma and torture the Applicant suffered as a result of the attempt on his life when the said 12 Respondent (Mohammed Ibrahim) used a Machete to attack the Applicant, on the 6th Respondent's express instruction.
- Vii . The sum of **₦250, 000, 000:00 (Two Hundred and Fifty Million Naira) Only**, as aggravated, exemplary and punitive damages, payable by the 6th to the 10th Respondents jointly severally, and also the 1st to the 4th Respondents, and the 11th Respondent, vicariously, for the wrongful, unlawful, illegal, cruel, oppressive, callous, outrageous, pervasive, barbaric, dastardly and unconstitutional infringement of the Applicant's right to his dignity of human person and the

resultant physical tortures, and the emotional and psychological trauma he suffered thereby.

- Viii. Aggravated, exemplary and punitive damages as in the sum of **₦250, 000, 000:00 (Two Hundred and Fifty Million Naira) Only**, payable by the 6th to the 10th Respondents jointly severally, and then the 1st to the 4th Respondents and the 11th Respondent, vicariously, for the wrongful, unlawful, illegal, cruel, wicked, unconscionable, sadistic, and unconstitutional contravention of the Applicant's right to his personal liberty and the consequent mental, emotional and psychological torture and trauma he suffered thereof.
- ix. Aggravated, exemplary and punitive damages in the sum of **₦250, 000, 000:00 (Two Hundred and Fifty Million Naira) Only**, payable by the Respondents, vicariously, jointly and severally, for the unjustified, inexcusable and malicious breach of the Applicant's right to freedom of movement and the attendant mental, emotional and psychological pain he suffered thereby.
- X. 10%(Ten percent) post judgment interest on the judgment sum in reliefs iv, v, vi and vii, above, from the date of judgment till the date of final liquidation of the entire judgment sum.
- Xi. An order of perpetual injunction restraining the Respondents, especially the 6th to the 12th Respondents, whether by themselves, or any person acting on their instruction or for them or

on their behalf, or in concert with them, whosoever and howsoever, from violating or further violating any of the Applicant's fundamental rights in relation to, or in connection with any claim in respect of a 3 Bedroom Bungalow situated at and known as Plot 447 Omodeinde Road, Duste-Alhaji New Extension, Zone 6, Dutse, FCT, Abuja, without due process of the law.

Xii. **And for such further or other orders** as this Honourable Court may deem just and expedient to make in the circumstances of this case.

2. **GROUND UPON WHICH THE RELIEFS ARE SOUGHT:**

- i. The Applicant had a slight misunderstanding with the 6th and 11th Respondents; the Manager and Landlady, respectively, of a premises: a 3 bedroom bungalow known as Plot 447 Omodeinde Street, Dutse-Alhaji New Extension, Zone 6, Dutse, Abuja, into which he was let, and which he in turn sublet part of, to the 7th Respondent.
- ii. The 6th and 11th Respondents purportedly terminated the tenancy of the Applicant and even suggested to the 7th Respondent to recover the money she paid to the Applicant for the said

premises he sublet part of it to her, by any means whatsoever.

- iii. The said slight misunderstanding, is an entirely civil case of a simple Landlord and Tenant dispute, or recovery of possession of premises and also recovery of money had and received for which the consideration has failed and over which a court of law is empowered exclusively to resolve, by the Constitution of the Federal Republic of Nigeria and the Statutes establishing the District Courts.
- iv. Rather than follow the due process of law, in either lodging their grievance before a Court of law for it to be redressed, or explore other civilized alternative dispute resolution means, the 6th to the 12th Respondents chose to take laws into their own hands by resorting to self-help and thereby violently violated the Applicant's fundamental human rights over a very simple civil misunderstanding.
- v. The intervention of this Honourable Court is urgently required to redress the serious dastardly mischief and irreparable damage inflicted on the Applicant by the Respondents, especially the 6th to the 12th Respondents, and also to deter them from committing such further or other acts again.

In his Written Address he had raised an issue which is:

“Whether from the facts deposed to in the Affidavit in support of this application, and the Exhibits attached, he has proven to the satisfaction of the Court the violation of his fundamental rights as to be entitled to the grant of the Reliefs he claims in his statement in support of this application”.

He supported the application with an Affidavit of 41 paragraphs which he deposed to in person. He also filed a written Address in which he canvassed to establish the infringement of his right jointly and severally by the Respondents. He attached documents in support.

It is the story of the plaintiff that he returned the 3 bedroom house at Plot 447 Omodeinde Road Dutse-Alhaji New Extension Abuja as a yearly tenant. That he sublet the house to the 7th Respondent contrary to the terms of agreement. That the 7th is the agent of the 11th Respondent. The same 11th had donated the property to 6th Respondent who is a staff of the 4th Respondent. That the 8-10 Respondent are the men of the 3rd Respondent. The 12th Respondent is security men in the said premises.

That after the expiration of this tenancy the 11th informed him that she should not renew the rent. That he had understanding with them to refund the money had and received from the 7th Respondent. That he had agreed with the 6, 7, and 11 Respondents to meet in order to settle the misunderstanding. That rather than meet alone the 6, & 7 came in with 2 Vehicle by Reg. No BWR 885 AL driven by the 9th Respondent- Abdullah Godwin Ashana- the vehicle is a Honda Saloon car (Aka End of Discussion). The other vehicle is **Reg. EPL 629**

ABJ driven by the 10th Respondent Stg. Yunusa. The vehicle a Peugeot 406 Saloon.

That on the June/July 2016 the 12th Respondent used his machete to attack him as instructed by the 6th Respondent. That he over powered the 12th Respondent. He later report the matter to the Police and the 12th & 6th Respondents were arrested and the 6th later released based on personal recognition. That the machete was recovered as Exhibit. This happened at the said Plot 447. That the 6th Respondent had harassed and threatened his life before the incident. That he was gang-bitter assaulted battered specifically by the 8th Respondent who seized his hands, twisted his arms behind his back. That the 9th Respondent continuously hit his ears while the 10th slapped the back of his neck and at the sometime kicking him all over his body and in mostly in very delicate parts of his body. That such beating was capable of killing him. That all this happened at a location near Barcelona Hotel in Wuse II on the 11/4/16.

That he was later abducted by the Respondent who pushed him into the car BWR 885 AL driven by 9th Respondent to an unknown destination. That the 2nd vehicle **REG.NO EPL 629 ABJ** followed them. they took him to the premises of the 4th Respondent. That the action of the Respondents was a gross infraction to his right to personal liberty contrary to **S.35 1999 Constitution Federal Republic of Nigeria & Article 5 & 6 African Charter.**

That the action of the 12th Respondent is an attempt to violate his right to life without any justification at all, An action which is contrary to the **S.41 1999 Constitution**

**Federal Republic of Nigeria (as amended) Article 12
African Charter.**

That his assault, abduction, false imprisonment and detention by the 8th – 10th as well as 6th Respondent who is agent of 11th Respondent is acting in concert with the 7th Respondent is a violation of his right to dignity of his human person, personal liberty and freedom of movement. **S. 35 1999 Constitution Federal Republic of Nigeria as amended.**

He urged Court to protect the said rights and compensate him monetarily for the damages suffer and order for written apology in 3 National and well circulated dailies.

On their part the 1st & 2nd Respondent filed a Counter Affidavit of 5 paragraphs by Emegbami Unekwu. In the Written address they raised 2 issues which are

1. Whether by the Affidavit of applicant the 8th Respondent can be said to be an employee of the 1st Respondents (Nigerian Army)
2. Whether the 1st Respondent can be held for the act of the 8th Respondent who is not known to be in the service of the 1st Respondent.

The 1st Respondent submitted that the 1st Respondent is not accused of any violation of Applicants right. That the 8th Respondent who the applicant claimed violated his right is not known to the 1st Respondent. That he is not a personnel of the 1st Respondent too. That the Applicant failed to explain and discussed the said 8th Respondent. That personnel of 1st Respondent normally carry and are holders of valid I.D Card which bears their names

Number, rank and Unit. That it is by such details that a personnel of the 1st Respondent is known and identified that the Applicant who Claimed that the 8th Respondent flashed an identity Card on his face did not give details of the said 8th Respondent. Beside that 1st Respondent had on its own investigated and discovered that there is no such personnel in its service that bears the name of 8th Respondent –David William Okolies that the Applicant by its paragraph 29 of Affidavit in support is only holding the 1st Respondent vicariously liable there must be proof of employer/employee relationship between them such proof must be with credible evidence.

That Applicant has no such credible evidence in this case. Again that there is no evidence to show that the 8th Respondent was carrying any official assignment as at the time the alleged action took place. That 8th Respondent did not carry out any instruction from the 1st Respondent. Also that the Applicant did not also show that 8th Respondent acted for and on behalf of the 1st Respondent as its employer. They referred to the case of:

**FIRST BANK VS AZIFUAKU (2016) LPELR 40173 (CA)
pg 23 PARA A.**

**IFEANYI CHUKWU (OSUDU) LTD VS SOLEH BONEH
LTD (2000) 5 NWLR (PT. 656) 322.**

That applicant's evidence is not cogent, reliable and incontrovertible to earn him the reliefs sought and hold the 1st respondent vicariously liable to the alleged violation of his rights. They reference to the case of:

**FAJEMIROKEN VS. CBCCL NIG. LTD & ANOR (2002)
10 NWLR (PT.744) 95@112**

That 1st Respondent cannot therefore be held vicariously liable for the action of the 8th Respondent whose identity is unknown to 1st Respondent and which the Applicant has failed to establish that the 8th is in the employment of the said 1st Respondent.

That by averment in paragraph 7 of the Applicant's Affidavit it shows that 8th did not act on the instruction of the 1st Respondent when he committed the alleged wrong. That the action done Ultra Vires/or by employee without the instruction of an employer cannot be the basis of holding the employer vicariously liable. That the averment in the said paragraph 7 shows that the 8th was not carrying out the instruction of the 1st respondent when he allegedly breached the fundamental rights of the Applicant. That Applicant is therefore not entitled to the reliefs sought. They urged the Court hold and resolve the 2 issues in their favour and dismiss the Application for lacking in merit.

On their part the 2nd & 3rd Respondent filed a Counter Affidavit of 8 paragraph paragraphs and a Written Address on the 16/1/20. They submitted that from the statement in support of the application. That the matter is against the 1,2,3,6-12 who are all distinct, separate and self-accounting legal entities statutorily empowered to sue and be sued and also answerable for their respective actions. They raised 2 issues for determination which are:

1. Whether the Applicant in his verifying Affidavit in support of his application has made out any case against the 2 & 3 Respondents for the alleged breach of his fundamental rights.

2. Whether the Applicant's suit can be properly, completely and effectively be determined without the joining of the 2 & 3 Respondents as parties in this suit.

ON ISSUE NO.1: they answered the question No.1 in the negative in that the Applicant had not made out any case against the 2 & 3 Respondent on the allegation of the infringement of his fundamental rights. That applicant failed to establish the wrongful act committed against him by the 2 & 3 Respondent contrary to **S.6(6)(a)1999 Constitution Federal Republic of Nigeria as amended** which gives the Applicant right to seek remedy. They cited in support the case of :

UWAZURONYE VS GOV. IMO STATE (2013) 8 NWLR (PT.1355) 28

AGF VS ABUBAKAR

That there is no cause of action against the applicant this suit by 2 & 3 Respondent. That there is no wrong doing by the 2 & 3 Respondent as the Applicant never alleged any against them in his Affidavit or Written Address. That Applicant had stated that it is the 9 & 10 Respondents that infringed his right and not 2 & 3 Respondents. That 2 & 3 are not aware of the action leading to the alleged Respondent. Again the 2&3 never received any complaint from this action. That they have no interest and will not be bound by the outcome of this case as they are therefore not necessary party to the case.

That there is no case against 2-3b Respondent in this case. Beside the Applicant has specific claim against 2 &

3 Respondents. That his claim is only against 8, 9 & 10 Respondents jointly and severally. They relied on the case of:

AYONKOPYA VS OLUKOYA (1996) 4 NWLR (PT.440) 1

That Applicant has no Cause of action against 2 & 3 Respondent. That his facts and exhibits does not support his claims against 2 & 3 Respondents on the infringements complained of. They urged Court to hold that Applicant failed to establish those infringements in that regard. They urge Court to strike the name of 2 & 3 Respondents from the suit as party and award substantial cost against the Applicant.

On their own part the 4 & 5 Respondents Federal Ministry of Justice and A-G Federation and Minister of Justice Filed a Counter Affidavit of 6 paragraphs deposed to by Egboja Elizabeth in there Written Address they raised an issue for determination which is that:

“Whether in view of the evidence before the Court the applicant is entitled to the Reliefs sought”.

They submitted that the claim on the suit of the declaratory order being sought failed because the applicant failed to place before the Court evidence to entitle him to the Reliefs. This is because the 4 & 5 Respondent are not responsible for the action allegedly committed by the 6th Respondent as those actions were never carried out by the 6th Respondent on his official capacity as staff of the 4th Respondent. Again that the rented apartment in issue does not belong to the 4 & 5 Respondents but privately contract by the 6th Respondent in his private capacity as an agent of 11

Respondent. That the suit is as a result of personal dealing with the 6th Respondent and has nothing to do with the 4 & 5 Respondent. Beside the 4 & 5 Respondent were not parties to and neither were they aware of what transpired between the Applicant and 1-3 and 6-12 Respondents. They urged court to dismiss the Suit because the declaratory order sought by the Applicant is mere speculation than factual.

That the 4 & 5 Respondents did not arrest, detain, harass or torture the Applicant. That they are not necessary or proper party to be sued in his case. That they cannot be held liable for the private act of the 6th Respondent.

The Applicant filed further Affidavit to the Counter Affidavit of the 1st, 2nd & 3rd Respondents. The Court will take the further Affidavit and reply on points of law.

The Applicant filed an 18 paragraph to the 1st Respondent Counter. He also filed a reply on points of law on 2 & 3 Respondent Counter he filed a further Affidavit of 18 paragraphs too. He filed further Affidavit of 12 paragraphs in response to the Counter by the 4 & 5 Respondents, Counter Affidavit.

In the Reply on point on in response to 1st Respondent's Counter. The Applicant raised an issue which is :

“whether having regard to the Affidavit in support of this application and further Affidavit in response to 1st Respondent's Counter, the Applicant is entitled to the Reliefs sought and has established a link between 1 & 8 Respondent and has satisfied the Court”.

He submitted that Court is duty bound to grant relief for improper use of power in this matter. He referred to the case of:

JOHN FALADE VS A-G LAGOS STATE (1980) 2 NCLR 771

CHIEF PAT ENWENE VS. COP (1993) 6 NWLR (PT.229) 333.

That he has shown that the 6, 8,9 & 10 Respondents are all employees of 1-5 Respondents. That the along with 7, 11 & 12 violated his right. That since he was unlawfully arrested, detained he is entitled to apology and compensation from the person and appropriate authorities by virtue of **S. 35(6) 1999 Constitution Federal Republic of Nigeria as amended**. That 1-5 are vicariously liable for action of the 6th Respondent. That 1 & 2 Respondents did not controvert the infringement by 8-10 Respondents. That 1 & 8 Respondents are liable. That the weakness of the cause of action does not vitiate the Claim of the Applicant. He cited the case of :

A-G FEDERATION VS. A-G ABIA (2001) 40 WRN 1@52

MOBIL PRODUCING UNLIMITED VS. LASEPA (2003) 1 MJSC 112@ 132

That 8 Respondent is an employee of the 1st and that he perpetuated all the violation of his rights. That the 9 & 10 Respondents can furnish the 1st Respondent with the details of the 8th Respondent's particulars as he is their colleague. That he has proved the flagrant acts of the 8 Respondent and he is therefore entitled to the reliefs sought. He urged Court to so hold.

On the reply on points of law to the 2 & 3 Respondent Counter Affidavit the Applicant raised two issues for determination which are:

1. Whether having regard to his submission in the Originating motion and further Affidavit he is not entitled to the Reliefs sought having established links between 2, 3, 8, 9 & 10 Respondents in this application.
2. Whether the 2 & 3 Respondents are necessary parties who must be joined as co-respondents in this Suit.

ON ISSUE NO.1: the applicant submitted that he did in the further Affidavit and Reply on points of law to counter by the 1 Respondent. He also cited the same case too.

ON ISSUE NO.2 : submitted that act of infringement was committed by 8-10 Respondents. That the essence of joining the Respondent is to bound them with the outcome of the case. He referred to:

OGUNDOYIN VS. ADEYEMI (2003) 13 NWLR (PT.730) 403 @ 423

That he is entitled to the Reliefs sought having established that the 4 & 3 are responsible vicariously for the act of the 8-10 Respondent. He urged the Court to so hold.

In the further Affidavit & Reply to the Counter by the 4 & 5 Respondent. That the 4 & 5 Respondent received a petition on 27/10/17 against the 6-11 respondents pending the investigation at the Police Divisional Head

Quarters Wuse zone 3 FCT Abuja which is attached as Exhibit M & N. that 4 & 5 did not controvert any of the fact in the Affidavit in support of the Application.

In the Reply Address he raised an issue which is:

“Whether putting into cognisance the entirety of the facts in this case and lucid Provision of the constitution .SS 33-35& 46 Article 4-6& 12 African Charter, the use of machete, slaps, beatings and other forms of assault and battery unleashed on him on 11/4/16 by the officers of 1-3 Respondent acting in concert with the 7th Respondent at the behest of the 6th Respondent an employee of the 4 & 5 Respondent and also the agent of 11 Respondent, is not unlawful and unconstitutional”.

In addition to the submission he made on the Reply to 1-5 Respondent the applicant further submitted here that he had established his case as per Supreme Court decision and therefore he is entitled to the declaratory reliefs as sought. That the applicant has established that the 1-5 Respondents in connivance with the 5th, 11th and 12th Respondent subjected him to emotional psychological trauma, torture inhuman and degrading treatment and thereby illegally interference with and violated his right to freedom of movement, personal liberty, dignity of his human person and right to life as shown in his Affidavit and further Affidavit in support of this Application. He relied on the case of:

A-G KEBBI STATE VS. HRH AL MUSTAPHA JOKOLO & ORS (2013) LPELR-22349 (CA)

That the treatment meted on him by the 1-5 amounts to torture, inhuman and degrading treatment. That it is not

in doubt that his rights were infringed by the Respondent. Especially the way he was abducted and taken and treated in the office of the 6th Respondent- Ernest Ezebilo Esq by the agents of 1-5 Respondent. He referred to Exhibit E & F –Affidavit of 7/2/18 and bank statement. He urged Court to hold that the Respondents violated his right as per provision of S.34 (1) (a) 1999 Constitution Federal Republic of Nigeria as amended and Africa Charter. He also relied on the case of :

**BLESSING ONOMEKU VS. COP DELTA STATE & ORS
(2007) CHR 173 @182**

That the 4 & 5 Respondent did not deny the fact that 6th Respondent was at that time still in their employ and that he was deterred and forced to make ATM withdrawals at Access Bank ATM at the Reception of 4 & 5 Respondent under the monitoring and guidance of 7, 8, 9 and 10 Respondents as deposed to. That 4& 5 Respondents are necessary party by S.150 of the Constitution 1999 on any matter against the Federal Government. He referred to the case of :

**ELELU-HABEEB VS. A-G FEDERATION (2012) 13
NWLJ (PT.1318) 423**

That the act was perpetrated in 4- 5 Respondents office in the official office of the 6th Respondent during working hours. That 4 & 5 Respondents are vicariously liable for the action and inaction of the 6th Respondent. That 6th Respondent is a Public officer. That he violated Applicant's rights (while) using his official office and on his official capacity. He urged Court to so hold and grant

all the reliefs sought further hold that this application is meritorious.

COURT

It is incumbent on an applicant who alleges that any of his rights under CAP 4 1990 Constitution Federal Republic of Nigeria is breached to present facts before the Court to show and establish that the actions and or inaction of the Respondents actually infringed on those rights. That the applicant does by facts presented in the Affidavit and where necessary and available exhibits in support of facts. Unless and until the Applicant has done so and the Respondents were not able to controvert same that it can be said that the rights of the Applicant was actually breached. Once that is the case the applicant will be entitled to his Reliefs and also entitled to be compensated for the breach of those rights. So the ball starts on the court of the Applicant. **See S.33 & 34,35, 41 and 46 1999 Constitution Federal Republic of Nigeria. See also the provision of Order 1 & 2 Fundamental Rights Enforcement Procedure 2009 and Article 4-6 and 12 African Charter on Human and Peoples Right.**

It has also been held in plethora of case and also provided eloquently in the provision of the 1999 Constitution Federal Republic of Nigeria that Security Organs of Government of Nigeria are prohibited to act as debt Recovery Agencies. Their respective functions are set out in the Constitution and their respective Acts. Their job is strictly to provide security of life and property of the citizens. Again they are prohibited from using the

instrumentality of their office to humiliate the citizens. Once it is established that any of such organ has violated or acted beyond the scope of their assignment under the law, the Court frowns at it and usually hold that they have so acted and their action for whatever reason is illegal.

The same is for the A-G Federation and the Ministry of Justice. A-G Federation is Chief law officer but not debt Recovery Agent and his ministry is not involved and should not be involved in issues of debt recovery.

It is imperative to state that any act done by the staff or employee of any government organ, security or otherwise, in the course of its duty is binding on such ministry. But where the employee's action is outside his official assignment, such employee is on his own. He will be held liable personally and where such action is taken to Court and the Court found it illegal he will bear the brunt of the outcome of the matter. That means if such act is done officially in the course of his duty he cannot be held liable personally but his office will be held liable.

Again the action or inaction of any citizen which infringes the right of another citizen is frowned at and where such allegation finds its way before the Court, that particular individual or individuals will suffer for it. Where the Court finds such individuals action illegal, such person will be liable to pay compensation to the person they have infringed his rights under the law **S.46 (1) (2) 1999 Constitution Federal Republic of Nigeria as amended.**

No individual is allowed to take the law into his hands. Allowing people to do so will definitely breed anarchy and no government thrives in an anarchical situation.

The Court had summarized the complaints of the Applicant as well as the Counters of some of the Respondents who filed Counter and the Applicant's further Affidavit and Reply on Points of law to those Counters. The question is has the Plaintiff been able to establish that the Respondents infringed on those rights he enumerated and that he is entitled to compensation as provided under S.46 1999 Constitution Federal Republic of Nigeria as amended?

It is the humble view of this Court that Applicant Chekwube Osita Ebubealor Esq has established that some of the Respondents action infringed on his rights as follows-

The use of machete by Mohammed Ibrahim the 12th Respondent in this Suit to fight the Applicant on the express instruction of the 6th Respondent sometimes in June 2016 within the premises of Plot 447, Omodeinde Road Dutse Alhaji New Ext. Zone 6 Dutse Abuja infringed the right of the Applicant to life. Such action violated and is a threat to the Applicant's life and it violated the provisions of **S.33 1999 Constitution Federal Republic of Nigeria as amended**. Such act is unlawful, illegal and condemnable. So this Court holds.

Again slapping, beating, battery and other forms of assault on the Applicant by the 8,9 & 10 respondents jointly on the 11/4/16 near Barcelona Hotel in wuse II acting in concert with the 7th Respondent and at the

behest of the 6th Defendant flagrantly violated the Applicant's right to the dignity of his person and is in total violation of the provision of **S.34(1) (a) 1999 Constitution Federal Republic of Nigeria and Article 5 African charter**. So this Court holds.

Again the abduction of Applicant by the said 8,9 & 10 Respondents employed by 1-3 Respondents acting in concert with 7th Respondent at the instigation and behest of the 6th Respondent agent of 11 Respondent on 11/4/2016 by pushing the Applicant into the ash coloured Honda Accord Reg. No BWR 885 AL which the 9th Respondent drove followed by the Peugeot 405 saloon Reg. No EPL 629 ABJ driven by 10th Respondent –Sgt Yunusa which followed closely the Honda BWR 885 AL when the said Respondents took the Applicant to the office of the 6th Respondent is violation of the Applicant's right to personal liberty under **S.35 1999 Constitution Federal Republic of Nigeria as amended as well as S.41 of the same Constitution**.

To start with, the action of the aforementioned Respondents 8, 9 & 10 were not official and not done in the course of their official assignment. To that extent all those respondents are personally liable for the infringement of the Applicant's right under CAP 4. They all acted illegally, unlawfully and in total violation of the said Right. They are all personally liable. Also the action of the 6th Respondent who instigated arranged co-opted and garnered the other Respondents who are employees from the security office of Navy, Army and Air Force using them to effect his plan to recover debt from the Applicant is also an infringement on the right of the

Applicant. The 6th Respondent has no right to use thugs or personnel from the Army, Navy and Air force to terrorize the Applicant all in the bid to get him out of the premises and recover money received from his fiancé. Beside the same 6th Respondent who is alleged is a Barrister ought to know that he has no right to take the laws into his hands and resort to self help. The action of the 6th Respondent is condemnable and it is imperative to state that notwithstanding that the 8, 9 & 10 Respondents abducted the Applicant and took him to the office of the 6th Respondent and parked the vehicle of abduction in the compound of the 1 & 2 Respondents the employer of the 6th Respondent it does not make the 4 & 5 Respondents liable. This is because the 6th Respondent's action was not done in his official capacity as an employee of the 4 & 5 Respondents. The 4th & 5th Respondents never had any privity of contract with the Applicant in regard to the issue of Tenancy and Rent of Plot 447 Omodeinde Road. So also the 1st -3rd Respondents are not responsible for the action of their respective personnel who acted unofficially by being used as debt recovery thugs which they did at the instigation of the 6th Respondent. The said personnel are personally liable for their respective actions.

It is most unfortunate that a supposed learned gentleman who is a Barrister and Solicitor of the Supreme Court of Nigeria should be and act so unlawfully to the extent of using thugs to act as he did in this case. He Ernest Eze violated and instigated the violation of the extant rights of the Applicant Chekwube Ebubealor by his action and prompting of the said

Respondents to violate the rights of the Applicant. The 7th Respondent –Maureen has equally on her own action, inactions prompting and instigation violated and instigated the violation of the extant rights of the Applicant as alleged.

The rife she plan clearly showed that Her attempt to recover the money she paid to the Applicant through the use of the men and women from government security agencies who acted unofficially is a violation of the right of the Applicant. The men from the government agencies- Army, Navy and Air-force who slapped, beat, dehumanized and humiliated the Applicant, violated the rights of the Applicant.

To start with, they acted as debt recovery agents which they are not. They also did so wearing their respective uniforms acting as if they were on official duty which obviously they were not. Again their action is illegal. It is a rogue service and they all know it. They have no right under the law and Constitution to so act. Their action violated the right of the Applicant. They have no right to touch the Applicant. Abducting the Applicant, putting him in a vehicle and bundled him to the office of the 6th Respondent in the compound of the 4th & 5th Respondent are all action which severally and jointly violated the rights of the Applicant they all know it.

Even the 6th Respondent asking the said Respondent welcoming them to his office where they took the Applicant further shows how callous and wicked the 6th Respondent is; treating his fellow lawyer in such a degrading and disgraceful manner shows how vicious the 6th Defendant is. The 1-5 Respondent did not do

anything for Court to hold that they are liable in violating the said rights of the applicant. But the men, their staff did severally violated the rights of the Applicant. The 6-10 Respondent's thugs are all personally liable for the violation of the said right. So this Court holds. This is because none of them acted on official capacity. Their respective offices and employers 1-5 Respondents are not in any way liable for the action of 6-10 Respondents. The 6-10 violated the right of the Applicant. So also the 12th Respondent.

The Applicant had been able to show that his rights were violated. The documents tendered puts no one in doubt about that. This Court finds this application meritorious. Having established that his rights were violated the 6-10 Respondents as well as by the 12th Respondent, the Applicant is entitled to Damages-Aggravated Exemplary and Punitive damages.

This Court hereby Order as follows:

Reliefs i-iv granted

Also Relief xi granted

The 6th Respondent to pay to the Applicant the sum of N100,000.00 (One Hundred Thousand Naira) only for instigating and violating the Rights of the Applicant.

The 7th ,8th 9th & 10th Respondents to pay the sum of N30,000.00 (Thirty Thousand Naira) each to the Applicant for violating his right.

The 6th Respondent should also tender written apology to the Applicant in addition to the said N100, 000 Since the Tenancy is between the 6th Respondent and the Applicant

the 11th Respondent is not liable and did not violate the Applicants right.

This is the Judgment of this Court.

**Delivered today theday of
.....2021 by me.**

.....

K.N.OGBONNAYA

HON.JUDGE